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Including SSAT Decisions

Opinion

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Budget 2004–2005

The recent Federal Budget includes the Government's *More Help for Families* package, containing the following initiatives:

- an increase in the rate of family tax benefit Part A of \$600 per child to be paid as a lump sum upon reconciliation of entitlement following the end of the financial year, commencing in respect of the 2003–2004 financial year (or to be offset against any overpayment). However, an immediate payment of \$600 per child was paid prior to 30 June 2004 to all families receiving or eligible for family tax benefit Part A in the 2003–2004 year
- the introduction from 1 July 2004 of a new universal Maternity Payment, paid as a lump sum of \$3000 for each new born child. This payment is to increase to \$4000 from 1 July 2006 and to \$5000 from 1 July 2008
- a reduction in the income test taper rate for the maximum rate of family tax benefit Part A from 30 cents to 20 cents, with effect from 1 July 2004
- an increase in the income test threshold for family tax benefit Part B so that the secondary earner in a family can earn \$4000 per year (formerly \$1825).

The income test taper is also being reduced from 30 cents to 20 cents for each dollar of income in excess

- quarantining of family tax benefit Part B payments for mothers who return to work after the birth of a child so that income earned after they return to work will not affect the family tax benefit Part B received earlier in that financial year.

The *Carers Package* similarly provides for:

- a one-off Carers Bonus of \$600 to recipients of carer allowance and \$1000 to recipients of carer payment, payable before 30 June 2004
- the extension of carers allowance to carers who do not live with the people for whom they provide care. They must provide a minimum of 20 hours per week personal care and the caree must require substantial levels of personal care on a daily basis, assessed using the Adult Disability Assessment Tool. These changes are to be implemented from 1 April 2005.

Other changes are:

- a 50% assets test exemption from 20 September 2004 for 'market linked

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income streams'. This is described as a new investment product which will provide returns linked to the investment market, but the purchaser will not be able to withdraw their capital before the term of the product has ended

- a 50% assets test exemption for certain non-commutable purchased income streams (currently 100%). This will apply to products purchased from 20 September 2004. Products purchased before that date are unaffected
- an exemption, under the social security income test, for scholarships that pay tuition fees on a student's behalf or waive all or part of a student's tuition fee. This will apply to such scholarships in the secondary, vocational

education and training, and higher education sectors, from 1 January 2004.

A range of compliance measures will also be implemented:

- 20,000 face-to-face interviews to be undertaken by Centrelink each year from 1 July 2005 with parenting payment (single) customers who report a change of address, to verify their relationship status
- rent assistance data-matching reviews to be increased
- data-matching to be carried out between Centrelink and the Department of Employment and Workplace Relations Job Placement records to detect customers who obtain income through placement in part-time and casual positions by Job Network members

- an additional 147,000 random service profiling reviews to be carried out each year for customers receiving newstart allowance, youth allowance, Austudy, age pension, disability support pension and parenting payment to ensure they are receiving their correct payment
- additional funding to be made available for the assessment of income and assets held by customers in trusts and private companies
- a national multi-media campaign to be undertaken to encourage customers to voluntarily report changes in their circumstances that could affect their income support payments.

[A.T.]

Administrative Appeals Tribunal

Assets test: 'lifting the corporate veil'; special circumstances waiver where beneficial policy not applied

SECRETARY TO THE DFaCS and MEYER
(No. 2004/240)

Decided: 18 February 2004 by J. Dwyer.

Background

Mr and Mrs Meyer were sole shareholders in a private company, Thirty Third Deltalux Pty Ltd ('the company'). The only asset of the company was a loan to the shareholders, which placed a value on the shares for Centrelink purposes ranging from \$176,153 in 1992, \$276,394 in 1994 and \$124,816 in 2000. On the advice of their accountant, Meyer had represented the value of the shares to Centrelink to be between \$12,000 in 1992 and nil in 1994. The loan arose following the company's sale of real estate in 1992 to avoid taxation consequences which would have attached had the sums been distributed. The proceeds from the loan were used by Meyer to purchase property and investments.

As a result of a data-match with the ATO in August 2000 revealing the value of the shares for taxation purposes, debts were raised against Mr and Mrs Meyer

in the respective sums of \$19,661.58 and \$30,563.68 on the grounds that the total value of their assets exceeded the allowable pension thresholds. The SSAT elected to waive all but \$3342.91 of Mr Meyer's debt and \$3199.34 of Mrs Meyer's debt, in part by application of s.1237A(2) of the *Social Security Act 1991* ('the Act') (underestimation of property value) and in part by application of s.1237AAD (special circumstances).

The issue

The AAT needed to consider whether it could 'lift the corporate veil' in respect of the share value and in particular the loan, the proceeds from which had been applied to purchase other assets being assessed by Centrelink. In the event it was held a debt arose, waiver needed to be considered.

The law

The Act provides for an assets test which includes assessment of shares and loans. Section 1121(1) provides for the value of an asset to be reduced by a charge or encumbrance, but only if that charge exists over the particular asset. Section 1237A(1) permits waiver where a debt arises solely from administrative error, and s.1237A(2) permits waiver where a person underestimates the value of an asset, but only where the estimate was made in good faith and the value of the property was not able to be easily determined. Finally, s.1237AAD permits waiver in

'special circumstances' but only if a 'knowing' failure has not occurred.

Discussion

The Secretary contended that the value of the shares in the company held by Meyer needed to take into account, as an asset of the company, the value of the loan from the company to Meyer. Meyer submitted that the loan was in effect a loan to themselves, and given it was never intended to be repaid, there was no obligation to treat the loan as an asset to the company. Furthermore, Meyer submitted that it was unjust to take into account the loan as an asset of the company in assessing the value of the shares, and also to assess the assets, which included property and investments, which were purchased with the loan proceeds. Meyer submitted that in effect, one asset had been counted twice.

The AAT cited the Federal Court matter of *Repatriation Commission v Harrison* [1997] 956 FCA (17 September 1997) and concluded that the valuation of the shares in the company at any particular time had to take into account the value of the loan to Mr and Mrs Meyer recorded in the company's financial statements. Furthermore, the AAT was satisfied that debts arose under the debt creation provisions in force during the debt period.

The AAT was satisfied that administrative error was not the sole cause of the debt and s.1237A(1) could not apply. In contemplating s.1237A(2), which had been applied by the SSAT for part of the period,